

Order

**Michigan Supreme Court
Lansing, Michigan**

Entered: January 16, 2002

Maura D. Corrigan,
Chief Justice

01-27

Proposed Amendment of
Rule 6.508 of the
Michigan Court Rules

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.508 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment. The Court welcomes the views of all who wish to address the form or the merits of the proposal or to suggest alternatives. Before adoption or rejection, the proposal will be considered by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted on the Court's website, www.supremecourt.state.mi.us.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below.]

Rule 6.508 Procedure; Evidentiary Hearing; Determination

(A) - (C) [Unchanged.]

(D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

(1) - (2) [Unchanged.]

(3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates

(a) [Unchanged.]

(b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, "actual prejudice" means that,

(i)-(iii) [Unchanged.]

(iv) in the case of a challenge to the sentence, the sentence is invalid~~;~~.

(4) seeks a renewed opportunity for an appeal of right from a judgment of conviction and sentence that the defendant did not appeal within the time allowed by MCR 7.204(A)(2), unless the defendant demonstrates that the attorney or attorneys retained or appointed to represent the defendant on direct appeal from the judgment either

(a) disregarded the defendant's instruction to perfect a timely appeal of right; or

(b) otherwise failed to provide effective assistance and, but for counsel's deficient performance, the defendant would have perfected a timely appeal of right.

The court may waive the "good cause" requirement of subrule (D)(3)(a) if it concludes that there is a significant possibility that the defendant is innocent of the crime.

(E) [Unchanged].

Staff Comment: Proposed new subrule (D)(4) would codify Roe v Flores-Ortega, 528 US 470; 120 S Ct 1029; 145 L Ed 2d 985 (2000).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court clerk in writing or electronically by May 1, 2002. P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@jud.state.mi.us. When filing a comment, please refer to file **01-27**.